### UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

ELLE SASSON, MAGA TEAM (HONG KONG) LTD. and ELLE MOORE & G LLC,

Plaintiffs,

٧.

HACHETTE FILIPACCHI PRESSE SA d/b/a ELLE MAGAZINE,

Defendant.

Civil Action No. 15-CV-00194 (VM)

FIRST AMENDED COMPLAINT FOR DECLARATION OF NON-INFRINGEMENT AND NON-DILUTION OF TRADEMARK

**ECF CASE** 

1. Plaintiffs Elle Sasson, Maga Team (Hong Kong) Ltd. and Elle Moore & G LLC by and through their undersigned attorneys, for their First Amended Complaint against defendant Hachette Filipacchi Presse SA d/b/a Elle Magazine ("Hachette" or "Defendant"), allege as follows:

#### INTRODUCTION

- 2. Plaintiff Elle Sasson is a fashion designer that has met with substantial consumer and trade acclaim and sales success, ever since the introduction of her first fashion line in early 2014. Plaintiffs Maga Team (Hong Kong) Ltd. and Elle Moore & G LLC are business entities that manufacture, distribute and sell the branded clothing products of Elle Sasson.
- 3. Defendant is the proprietor of the magazine ELLE and the owner of its associated ELLE intellectual property registrations. Defendant has (i) sent a cease and desist letter to Elle Sasson and her father and business partner Maurice Sasson regarding their use and registration of the mark ELLE SASSON and (ii) commenced an

opposition proceeding against the trademark application for ELLE SASSON in an attempt to control the manner in which Elle Sasson <u>uses her own natural name</u> and brand "Elle Sasson" in the fashion marketplace. If unimpeded and successful, Defendant's actions will cause irreparable harm to Plaintiffs' business activities.

#### NATURE OF ACTION

4. This is an action for declaratory judgment which arises under the Lanham Act, 15 U.S.C. § 1051, et seq. By this action, Plaintiffs seek a declaration that they have not infringed upon or diluted the asserted trademark rights of Defendant in the mark ELLE by virtue of Plaintiffs' use, distribution, sales and/or other related activities under Ms. Sasson's natural name and brand "Elle Sasson" in the fashion marketplace.

#### **JURISDICTION AND VENUE**

- 5. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338 with respect to the claims arising under the Lanham Act, 15 U.S.C. § 1051, et seq. and pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, et seq.
- 6. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because this is an action brought pursuant to the Lanham Act and a substantial part of the events giving rise to Defendant's claims occurred within this district.

#### THE PARTIES

7. Elle Sasson is a citizen of the United States, and as noted, is actively involved in all aspects of the fashion business, under her natural name and brand "Elle Sasson."

- 8. Maga Team (Hong Kong) Ltd. is a corporation organized under the laws of the British Virgin Islands, with a mailing address at P.O. Box 915, Road Town, Tortola, British Virgin Islands. The designer Elle Sasson is a principal of this entity.
- 9. Maga Team (Hong Kong) Ltd. is the owner of the ELLE SASSON trademark and brand in the United States and internationally, and the manufacturer and exporter of "Elle Sasson" branded clothing.
- 10. Elle Moore & G LLC is a limited liability company organized and existing under the laws of the State of New York, with an address at 437 Madison Avenue, 40<sup>th</sup> Floor, New York, New York 10022.
- 11. Elle Moore & G LLC controls and oversees various activities with respect to "Elle Sasson" branded clothing in the United States, including importation, distribution, and sales activities in the fashion marketplace.
- 12. Hachette is a corporation organized and existing under the laws of France with a principal place of business at 149, rue Anatole France, Levallois-Perret Cedex, 92534, France. Upon information and belief, Hachette and/or companies under its direction and control, have offices in New York, New York.
- 13. Hachette is the proprietor of ELLE magazine, and the owner of its related ELLE United States trademark registrations.
- 14. Personal jurisdiction over Hachette exists because Hachette (i) transacts business within this State and judicial district through its ELLE magazine and other activities, (ii) regularly does or solicits business within this State and judicial district, (iii) derives substantial revenue from intrastate and interstate commerce; (iv) has committed

tortious acts having injurious consequences within this State and judicial district, and (v) because Hachette expected or should have reasonably expected its tortious acts to have injurious consequences to Plaintiffs within this State and judicial district.

#### FACTUAL BACKGROUND

#### **Elle Sasson's Fashion Line and Growth**

- 15. The designer Elle Sasson was born in 1988 in New York City to fashion icon Maurice Sasson and his wife. A copy of her birth certificate is attached as **Exhibit**A.
- 16. Ms. Sasson trained with the well-known designers Alice + Olivia and Derek Lam in New York before branching off to create her own label.
- 17. In Spring 2014, Plaintiffs, under the direction and guidance of Ms. Sasson, began using the ELLE SASSON mark in commerce by releasing the first line of "Elle Sasson" branded women's daytime wear. Photographs of pieces from this collection and her 2015 collections are attached as **Exhibit B**. Plaintiffs intend to expand their activities in the fashion marketplace to other fashion products and services.
- 18. Plaintiff Elle Moore & G LLC imports and distributes "Elle Sasson" branded clothing in the United States.
- 19. 10eleven, on information and belief one of the most influential multi-line showrooms in the country, has accepted "Elle Sasson" clothing into its New York and Los Angeles showrooms. The "Elle Sasson" clothing is displayed alongside the clothing of such iconic designers as Diane Von Furstenberg. 10eleven is responsible for promotion, offering for sale and sales of the "Elle Sasson" brand in the U.S., with the

support of plaintiffs Elle Sasson and Elle Moore & G LLC.

- 20. Since their introduction, Plaintiffs' "Elle Sasson" garments have received praise from prominent members of the fashion press.
- 21. Refinery29, on information and belief the largest independent fashion and style website in the Unites States and the fastest growing media company on the 2013 Inc. 500 list, in an article entitled "New Designer Crush! An NYC Line We'll Wear All Spring" stated that they were "already kind of die-hard fans" and that Elle Sasson was a "new It designer." A copy of this online article is attached as **Exhibit C**.
- 22. Style.com, on information and belief the most-visited women's fashion magazine site online, stated that "Elle Sasson strikes a balance" and lauded her for her "razor-sharp focus." A copy of this online article is attached as **Exhibit D**.
- 23. The Zoe Report, the website of famed fashion stylist and reality television star Rachel Zoe, in an article entitled "Obsessed: Elle Sasson's LA-Inspired Collection," said that Ms. Sasson's "namesake line features ultra-cool cuts with a feminine, California-inspired twist we're dying to get our hands on." The article further stated that they "adore her ready to wear line." A copy of this online article and the relevant portions of its webpage is attached as **Exhibit E**.
- 24. The fashion magazine Teen Vogue, in an article entitled "Palm Trees? Yes Please! Why Elle Sasson is the New Label We Love," and subtitled "We're crushing hard on the NYC-based designer's debut collection," stated "Count us among the young designer's super-fans". A copy of this online article is attached as **Exhibit F**.
  - 25. Women's Wear Daily, on information and belief the most prominent daily

fashion publication in the U.S., featured Elle Sasson for a "New Designer Profile." A copy of this article is attached as **Exhibit G**.

- 26. The fashion magazine Nylon, in a blurb in its April 2014 print version entitled "palm d'or," stated "Elle Sasson's very first collection is full of everything we want to wear right this minute." A copy of the magazine page featuring this blurb is attached as **Exhibit H**.
- 27. Celebrities have also flocked to the "Elle Sasson" brand. The actress and dancer Julianne Hough wore an "Elle Sasson" brand dress on the cover and in a photo shoot for People Magazine's June 30, 2014 issue. The cover and excerpts from this People Magazine are attached as **Exhibit !**.
- 28. "Elle Sasson" brand's latest line of clothing has also been featured in Self Magazine, Essence magazine and In Style magazine. Copies of the pages from these magazines featuring "Elle Sasson" clothing are attached as **Exhibit J**.
- 29. Defendant's ELLE Magazine itself has applauded Elle Sasson by featuring her clothing in its "25 Ways to Ace Tennis Style" and "50 Dresses Perfect for Summer" slideshows on its website <www.elle.com>. Excerpts from these slideshows featuring "Elle Sasson" clothing are attached as **Exhibit K**.
- 30. The retail fashion marketplace has also responded favorably to Plaintiffs' "Elle Sasson" clothing.
- 31. In September 2014, major retailer Bergdorf Goodman featured Elle Sasson's clothing in one of its exterior window displays in its Manhattan flagship location. Photographs of this display are attached as **Exhibit L**.

- 32. Plaintiffs' "Elle Sasson" clothing is currently sold in specialty stores, major U.S. retailers Neiman Marcus and Saks Fifth Avenue, and on websites such as Stylebop and Intermix.
- 33. Within this short period, the sales of Plaintiffs' "Elle Sasson" clothing have expanded internationally to countries such as Germany, Dubai, South Korea, United Arab Emirates and Singapore.

#### **The Sasson Name**

- 34. The designer Elle Sasson's name, the brand "Elle Sasson," and the associated trademark ELLE SASSON prominently feature the name "Sasson," which has longstanding significance within the fashion industry based upon the exploits in the fashion world of the designer's father Maurice Sasson.
- 35. In the mid-1970s, Maurice Sasson started Sasson Jeans, which became a well-known brand and successfully introduced the idea of designer jeans to the world. For the first time, due to their flattering cuts and styles, jeans became a fashion statement.
- 36. Women's Wear Daily, in its profile of Elle Sasson, stated that "The name Sasson was synonymous with designer-jean chic in the Seventies and better casual in the Eighties." See **Exhibit G**.
- 37. At its peak in 1984, sales of jeans using the Sasson brand soared well over \$100 million.
- 38. The Sasson name was extensively licensed on products from watches to lingerie, and the "Oo-la-la Sasson" jingle was sung by members of the New York

Rangers hockey team in popular commercials.

- 39. The "Sasson" tradition continues as Sasson brand jeans are currently sold in the major American retailer Walmart.
- 40. As a result of these activities, to the public interested in fashion, the designer name and brand "Elle Sasson" continue the Sasson surname and tradition to the present.

#### <u>Defendant's Threat of Legal Proceedings Against Plaintiffs</u>

- 41. On or about September 13, 2013, Maurice Sasson and Elle Sasson received a cease and desist letter from counsel for Hachette, with the subject line "OBJECT: USA Hachette Filipacchi Presse." A copy of the original illegible letter, and a transcribed legible copy, are attached as **Exhibit M**.
- 42. Defendant's counsel in said letter took issue with Plaintiffs' use and trademark application for ELLE SASSON, and further threatened legal action against Mr. Sasson and Ms. Sasson. The following are excerpts from said letter:
  - ...Such use and registration will mislead the consumer into conceiving an association or link between you and our client, and may take unfair advantage and or cause detriment to the reputation of our client's earlier mark ELLE and or may dilute the value of our client's famous trademark...
  - ...Moreover, the consumer could be misled into believing that you are an authorized user and/or a licensee and/or an affiliated company or

that there is some sort of arrangement with you. Consequently, the present letter serves to notify you that the registration and the use of ELLE SASSON is considered by our client as damaging its exclusivity to ELLE. Of course, our client reserves any other legal qualification of facts that further information may reveal...

...Immediately after receipt of the present letter, undertake formally and in writing, to cease all use and to never use in the future ELLE SASSON and/or any equivalent sign and/or any other sign confusingly similar to the trademark ELLE, whether as a trademark and/or a trade name and or a shop sign, and or a domain name, with your acknowledgment of our client's prior rights...

...Please note that if no response is forthcoming within the above stipulated deadline, our client expressly reserve its right to take the appropriate measures including, where necessary, instituting legal proceedings and or opposition proceedings...

...This letter is being sent without prejudice to any claims courses of act ion, damages and equitable relief, attorney's fees and/or defenses, all of which are hereby reserved.

43. Upon receipt of this letter, Plaintiffs promptly engaged Defendant in discussions aimed at resolving all disputes concerning Plaintiffs' use and registration of the ELLE SASSON mark. The content of these discussions, which proved to be

unsuccessful, primarily concerned the scope of Plaintiff's use of the ELLE SASSON mark.

- 44. In an email dated April 28, 2014, Defendant's counsel stated in part that "my client will accept the use in two words if you (sic) client refrains from attempting to register the name."
- 45. In an email dated June 5, 2014, Defendant's counsel stated that among the issues discussed were "use of Elle Sasson in 2 words" and that Plaintiffs were to "never use Elle alone".
- 46. In an email dated June 12, 2014, Defendant's counsel stated that among the conditions by which her client would accept Plaintiffs' use of the ELLE SASSON mark were that said use must be "use in a signature form" and that Plaintiffs were to "never use Elle alone".
- 47. In an email dated August 19, 2014, Defendant's counsel stated that "if your client is not willing to consider modifying its labels and continues to entertain the idea that it will pursue and amplify its current use, then unfortunately, my client is going to fight you till (sic) the end."
- 48. In an email dated October 22, 2014, Defendant's counsel stated that "my client does not agree that ... your client can use on all goods and services with the exception of on-line or print magazines, subject to management's approval: your client may not use or register ELLE SASSON in classes 16, 38 and 41 including for media, informational, editing, publishing and entertainment services."

- 49. In an email dated November 3, 2014, Defendant's counsel wrote that Defendant would not accept Plaintiffs' "use on all products and services even if an exclusion is made of classes 16, 38 & 41."
- 50. In an email dated December 29, 2014, Defendant's counsel wrote that Defendant would not accept "an agreement that does not restrict...the goods under which the ELLE SASSON logo may be used."
- 51. On February 21, 2013, Plaintiff Maga Team (Hong Kong) Ltd. filed in the United States Patent and Trademark Office ("P.T.O.") an intent-to-use application for the trademark ELLE SASSON in relation to "clothing, namely dresses, pants, jackets, blouses, pant suits, dress suits, slacks, shirts, headwear, belts, blouses, skirts, evening gowns, vests, blazers, lingerie." On June 12, 2013 the Examining Attorney for the P.T.O. issued an Examiner's Amendment which included, *inter alia*, a statement that the Examining Attorney had searched the database of registered and pending trademark and had found no conflicting marks that would bar registration. On information and belief, the Examining Attorney reviewed the ELLE trademark registrations owned by Defendant, including multiple ELLE registrations in relation to clothing products, and determined that there was no likelihood of confusion between Defendant's ELLE trademark registrations and the mark ELLE SASSON.
- 52. On February 24, 2014, Defendant instituted a Trademark Trial and Appeal Board opposition action, Proceeding No. 91215067, opposing plaintiff Maga Team (Hong Kong) Ltd.'s application to federally register the trademark ELLE SASSON, and

asserting claims for likelihood of confusion under 15 U.S.C. §1052 (d) and dilution under 15 U.S.C. §1125 (c) (the "Opposition").

- 53. Plaintiff Maga Team (Hong Kong) Ltd. filed its Answer to the Notice of Opposition on April 4, 2014, denying the material allegations thereof.
- 54. On January 15, 2015, Plaintiff Maga Team (Hong Kong) Ltd. filed a Motion for Request to Suspend Opposition Pending the Outcome of a Civil Litigation in the Opposition, under Section 37 C.F.R. Section 2.117, TMBP Section 510.02(a). Said Motion was granted by the Trademark Trial and Appeal Board on February 13, 2015 in an Order which stated "in this opposition the involved application is based on Trademark Act Section 1(b); thus, applicant will be statutorily required to demonstrate actual use of its mark in commerce prior to approval for and issuance of a registration. Accordingly, the outcome of the civil action could potentially have a bearing on, at a minimum, applicant's rights in, and specifically its right to use, the ELLE SASSON mark. Inasmuch as a final determination of this issue in the civil action could have a bearing on the issues that are before the Board, and thus could bear on the outcome of this opposition proceeding, the Board finds that suspension is appropriate". A copy of the Order granting suspension is attached as **Exhibit N**.

#### **Lack of Confusion**

55. Contrary to Defendant's conclusions, no fashion marketplace confusion has arisen between Defendant's ELLE magazine and ELLE products, and "Elle Sasson" branded clothing.

- 56. Defendants have not notified Plaintiffs or their counsel of any such fashion marketplace confusion.
- 57. On information and belief, Defendant has no knowledge of any such fashion marketplace confusion.
- 58. Based on Plaintiffs' current use of the ELLE SASSON mark, Defendant's continued attempts to regulate Plaintiffs' use of the ELLE SASSON mark, and Defendant's threats of litigation concerning the ELLE SASSON mark, Plaintiffs had an objective apprehension of litigation initiated by Defendant at the time of filing the Complaint.
- 59. By virtue of the foregoing, there is an actual, present and justiciable controversy between Plaintiffs and Defendant, and Plaintiffs are compelled to seek a declaration from this Court that their advertising, promotion and use of the ELLE SASSON mark on clothing does not infringe or dilute Defendant's mark ELLE.
- 60. Plaintiffs are jointly asserting a right to relief in relation to the same series of transactions and occurrences, and any question of law or fact that arises in this action is common to all Plaintiffs.

## COUNT I DECLARATION UNDER 28 U.S.C. §2201 OF NON-INFRINGEMENT OF TRADEMARK UNDER THE LANHAM ACT

- 61. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 60 as if set forth in full herein.
  - 62. The cease and desist letter of September 13, 2013 objecting in part to

plaintiffs' use of the mark ELLE SASSON brand and mark, sent from counsel for Hachette to Maurice Sasson and Elle Sasson (see paragraph 41 hereof) created an actual, present and justiciable controversy between the parties.

- 63. From as early as Spring 2014 to the present date, Plaintiffs as previously alleged have been advertising, marketing and selling clothing products bearing the mark ELLE SASSON.
- 64. Counsel for Hachette has never stated to Plaintiffs that they withdrew their cease and desist letter of September 13, 2013, and have never stated that they have no intent to sue Plaintiffs for trademark infringement.
- 65. The Parties negotiated with respect to Plaintiffs' use of the mark ELLE SASSON from the time of the cease and desist letter in September 13, 2013 until December 2014, when the negotiations failed. As Defendant's threats of litigation were still in effect, Plaintiffs initiated this action.
- 66. An actual controversy has thus arisen and now exists between Plaintiffs and Defendant concerning whether Plaintiffs, based on their use, advertising, marketing and sales activities with respect to the "Elle Sasson" brand, have infringed and are infringing Defendant's trademark rights in the mark ELLE.
- 67. Plaintiffs have not infringed and are not infringing, directly or indirectly, contributorily, by inducement or otherwise, any mark owned by Defendant, including any trademark rights that it owns in any valid ELLE mark.
- 68. Accordingly, Plaintiffs require a judicial determination of rights and duties of the parties under 15 U.S.C. §§1114 and 1125(a), and the common law, and a

declaratory judgment that Plaintiffs' use of its "Elle Sasson" brand and mark does not infringe, directly or contributorily, any valid ELLE mark held by Defendant.

### COUNT II DECLARATION UNDER 28 U.S.C. §2201 OF NON-DILUTION OF TRADEMARK UNDER THE LANHAM ACT

- 69. Plaintiffs repeat and reallege each allegation contained in paragraphs 1 through 68 as if set forth in full herein.
- 70. Plaintiffs have not diluted and are not likely to dilute, directly or indirectly, contributorily, by inducement or otherwise, any mark owned by Defendant, including any trademark rights that it owns in any valid ELLE mark.
- 71. Accordingly, Plaintiffs require a judicial determination of the rights and duties of the parties under the trademark laws of the United States (including but not limited to 15 U.S.C. §1125 (c)), the laws of the State of New York, and the common law with respect to use of the ELLE SASSON mark, and a declaratory judgment that Plaintiffs' use of the ELLE SASSON mark does not dilute, nor is it likely to dilute, directly or contributorily, any valid ELLE mark allegedly owned by Defendant.

## COUNT III DECLARATION OF NON-INFRINGEMENT AND NON-DILUTION OF TRADEMARK UNDER THE LANHAM ACT BY PLAINTIFF ELLE SASSON

- 72. Plaintiff Elle Sasson repeats and realleges each allegation contained in paragraphs 1 through 71 as if set forth in full herein.
  - 73. The birth name of plaintiff Elle Sasson is "Elle Sasson", and she has used

and caused to be used her birth name in the fashion world and on a line of clothing.

- 74. Plaintiff Elle Sasson was a recipient of the Defendant's cease and desist letter dated September 13, 2013.
- 75. Defendant, through its counsel, has demanded that plaintiff Elle Sasson severely limit use of her name as a brand name, and has threatened legal proceedings against her if she does not comply.
- 76. An actual controversy has arisen and now exists between plaintiff Elle Sasson and Defendant concerning whether Ms. Sasson, based on her use, advertising, marketing and sales activities with respect to the "Elle Sasson" brand, has infringed and is infringing Defendant's trademark rights in any valid ELLE mark.
- 77. Plaintiff Elle Sasson has not infringed and is not infringing, directly or indirectly, contributorily, by inducement or otherwise, any mark owned by Defendant, including any trademark rights that it owns in any valid ELLE mark.
- 78. Accordingly, plaintiff Elle Sasson requires a judicial determination of rights and duties of the parties under 15 U.S.C. §§1114 and 1125(a), and the common law, and a declaratory judgment that her use of the "Elle Sasson" brand and mark does not infringe, directly or contributorily, any valid ELLE mark held by Defendant.
- 79. Plaintiff Elle Sasson has not diluted and is not likely to dilute, directly or indirectly, contributorily, by inducement or otherwise, any mark owned by Defendant, including any trademark rights that it owns in any valid ELLE mark.
- 80. Accordingly, plaintiff Elle Sasson requires a judicial determination of the rights and duties of the parties under the trademark laws of the United States (including

but not limited to 15 U.S.C. §1125 (c)), the laws of the State of New York, and the common law with respect to use of the ELLE SASSON mark, and a declaratory judgment that her use of the ELLE SASSON mark does not dilute, nor is it likely to dilute, directly or contributorily, any valid ELLE mark owned by Defendant.

#### **WHEREFORE**, Plaintiffs demand judgment:

- A. That the Court issue a declaration that Plaintiffs' use of the ELLE SASSON mark and brand on clothing and related fashion products and services does not infringe, directly or contributorily, any valid ELLE mark held by Defendant under 15 U.S.C. §§1114 and 1125(a), the laws of the state of New York, or the common law;
- B. That the Court issue a declaration that Plaintiffs' use of the ELLE SASSON mark and brand on clothing and related fashion products and services does not dilute, directly or contributorily, any valid ELLE mark held by Defendant under 15 U.S.C. §1125 (c), the laws of the state of New York, or the common law;
- C. That the Court issue a declaration that plaintiff Elle Sasson's use of the ELLE SASSON mark and brand on clothing and related fashion products and services does not infringe, directly or contributorily, any valid ELLE mark held by Defendant under 15 U.S.C. §§1114 and 1125(a), the laws of the state of New York, or the common law;
- D. That the Court issue a declaration that plaintiff Elle Sasson's use of the ELLE SASSON mark and brand on clothing and related fashion products and services does not dilute, directly or contributorily, any valid ELLE mark held by Defendant under

- 15 U.S.C. §1125 (c), the laws of the state of New York, or the common law;
- E. That Plaintiffs are not violating any rights of Defendant with respect to any trademark at issue:
- F. That the Court issue a declaration that Elle Sasson's use of the ELLE SASSON mark and brand on clothing and related fashion products and services does not infringe, directly or contributorily, any valid ELLE mark held by Defendant under 15 U.S.C. §§1114 and 1125(a), the laws of the state of New York, or the common law;
- G. That the Court issue a declaration that Elle Sasson's use of the ELLE SASSON mark and brand on clothing and related fashion products and services does not dilute, directly or contributorily, any valid ELLE mark held by Defendant under 15 U.S.C. §1125 (c), the laws of the state of New York, or the common law;
- H. That Elle Sasson is not violating any rights of Defendant with respect to any trademark at issue;
- I. That Defendant's Opposition No. 91215067 against Plaintiffs' application for ELLE SASSON, currently pending in the Trademark Trial and Appeal Board, be dismissed with prejudice;
- J. That the mark ELLE SASSON, under Serial Number 85/855,981, proceed to registration with the United States Patent and Trademark Office;
- K. That Defendant and any affiliated entities, subsidiaries or parent companies be barred from instituting any further actions before the Trademark Trial and Appeal Board that would restrict or prohibit Plaintiffs' right to use and register their ELLE SASSON mark for its existing goods and services or goods and services that they may

expand to in the growth of their business;

- L. That the Court award Plaintiffs their reasonable attorneys' fees pursuant to 15 U.S.C. §1117 (A);
  - M. That Plaintiffs be awarded their costs to the extent permitted by law; and
- N. That Plaintiffs be awarded such other and further relief as the Court may deem just and proper.

#### JURY DEMAND

Plaintiffs demand a trial by jury.

#### GOTTLIEB, RACKMAN & REISMAN, P.C.

Attorneys for Plaintiffs 270 Madison Avenue, 8<sup>th</sup> Fl. New York, New York 10016 Tel. (212) 684-3900

By: /s/ George Gottlieb
George Gottlieb (GG 5761)
ggottlieb@grr.com
Marc P. Misthal (MPM 6636)
mmisthal@grr.com
Jonathan Purow (JP 0052)

jpurow@grr.com

Dated: January 11, 2016 New York, New York

# **EXHIBIT** A

### CERTIFICATE OF BIRTH REGISTRATION

Below is an exact copy of a certificate of Birth registered for your child. It is sent without charge. If the certificate contains any errors return this copy with the correct information to the Bureau of Vital Records, 125 Worth Street, New York, N.Y. 10013. You will be advised how to have the record corrected. It is important to do this at once.

The reproduction or alteration of this transcript is prohibited by Section 3.21 of the New York City Health Code.



Notice in Issuing this transcript of the record, the Department of Health of the City of New York does not certify to the truth of the statements made thereon as no inquiry as to the tacts has been provided by law.

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# **EXHIBIT B**













# **EXHIBIT C**



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### New Designer Crush! An NYC Line We'll Wear All Spring













SEE ALL SLIDES



Debuting a collection means you have to make a big impact, For new-to-the-scene NYC designer Elle Sasson that means bright colors, creative prints, and variations on volume. Sasson is launching her first collection for spring '14, and we're already kind of die-hard fans. There's a cat print that's still sophisticated, a voluminous top that's easy to wear, and tons of dresses with lovely embellishments that we want to sport all spring and summer long. We especially love the variety of colors - from jungle greens to super pigmented reds - that make this first batch of separates and throw-on-and-go frocks memorable, but somehow not overwhelming.

Click through the lookbook and get to know this new It designer. And, let us know in the comments if you have a favorite ensemble.

BEGIN SLIDESHOW >

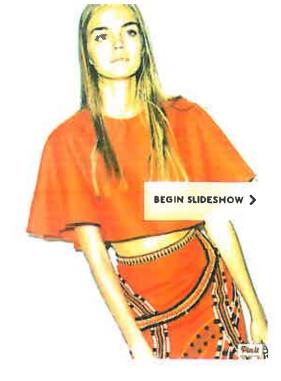
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9 Classes That Will Make You A Better Person



6 Really Good Reasons To Go Shopping



How To Have Fun In London This Autumn — Without Spending A Penny

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ABOUT PRESS ADVERTISING FEEDBACK MEREL-IKEN

R29 NEWS

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# **EXHIBIT D**



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## Style File blog

DESIGNER UPDATE

### With Sea Creatures and Sixties Shapes, Elle Sasson Strikes a Balance

July 6, 2014 10.40am



Amid the craziness of the ever-expanding Resort season it's refreshing to see a designer actually focus on the "resort" espect of it all. Elle Season's first foray into Pre-Spring is about as vacation-ready as it gets. Season, the daughter of eighties denim proprietor Maurice Season, has only been showing her tabel since Spring '14, but she's already been picked up by major retailers like Shopbop.com thanks to her razor-sharp focus. Her Resort outing, which includes cotton-eyelet separates, intricate fish embellishments, and tropical macaw prints, was inspired by Dévid Hockney's Partait of an Artist, circa 1972. "I was attracted to the colors he used and decided to incorporate the blues from the water and the orange from the man's jacket, and I made a print out of the green leaves," Season told Style.com. "Since I love enimals, i added colorful parrots as I imagined them flying in the blue sky, and from there the fish came into the collection as well." Rather than design another print, she placed beaded, jewel-like fish on miniskirts and slik blouses. One of her best dresses, an open-back chambray frock with folksy embroidery and a fringed ham, feels Saint-Tropez boho-luxe in the best way.

except pasts

EXCLUSIVE Straight From the Runway to Your Closet, a New App Speeds Up Spring 2015 Shopping

An illustrated Guide to NYFW Briquette

Anya Hindmarch's New Bespoke Shop at Bargdorf's Wifl Connect Customers With Craftsman

Style.com's Dirk Standen Gets Coveteur'd

EXCLUSIVE Garath Pugh Offers Up a First Look at His Disruptive Spring

departments

Dept. of Culture Designer Updats

Model Behavior Now Trending

Q&A

Fashlon

Shopping Alert

Social Intelligence
The Future of

Through Cadric's

Trend Trecking

about this ble

style file covers all the news in style, from high street to high fashion, with dispatches from new york, La., london, paris, mlan, lokyo, beging, and more



Sestember 2, 2014 / 25/gan

POSSO ON THEIR MULTI-PURPOSE BEAUTIFYING ELIXIR OF CHOICE

POSSO







🎚 Lollow uson Lwitte

September 3 2014

styledetcom **Welcome to Rick Owens' world.**stylem.ag/1nw.L7yR.p.c.tw.titer.com/0.D/FDV19R

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quest contributors





Minimal shapes provide a smart balance to Sasson's shimmering seacceatures and coral prints, "I love the sithouettes from the sixties and seventies, and that's definitely reflected in all of my collections," she said, "I appreciate more simple silhouettes that are a bit structured and will complement the prints and embroideries."

Next up for Sasson is her Spring '15 collection, which will see her expand her knitwear range and try her hand at—what else?—denim, Like father, like daughter Sasson is certainly one to watch.



Darrell Hartman Afsun Qureshi

Maya Singer

staff contributors

Nicole Pnelps

Noah Johnson

Marina Larroude

Brittany Adams

Katharine K. Zarrella

Kristin Anderson

Bring Hermsen

Enily Farra

Rachel Walgrove

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TurnedOut.tv

Vanessa Jackman



Þ



Designer Update

# **EXHIBIT E**

new designer (http://thezoereport.com/tag/new-designer/)

# OBSESSED: ELLE SASSON'S LA-INSPIRED COLLECTION

+ An Exclusive Interview With The Up-And-Coming Designer





ELLE SASSON SPRING 2014 COLLECTION.

Seeking a chic spring update to your existing wardrobe? Look no further than the latest designer on our radar, Elle Sasson. Elle's namesake line features ultra-cool cuts with a feminine, California-inspired twist we're dying to get our hands on.

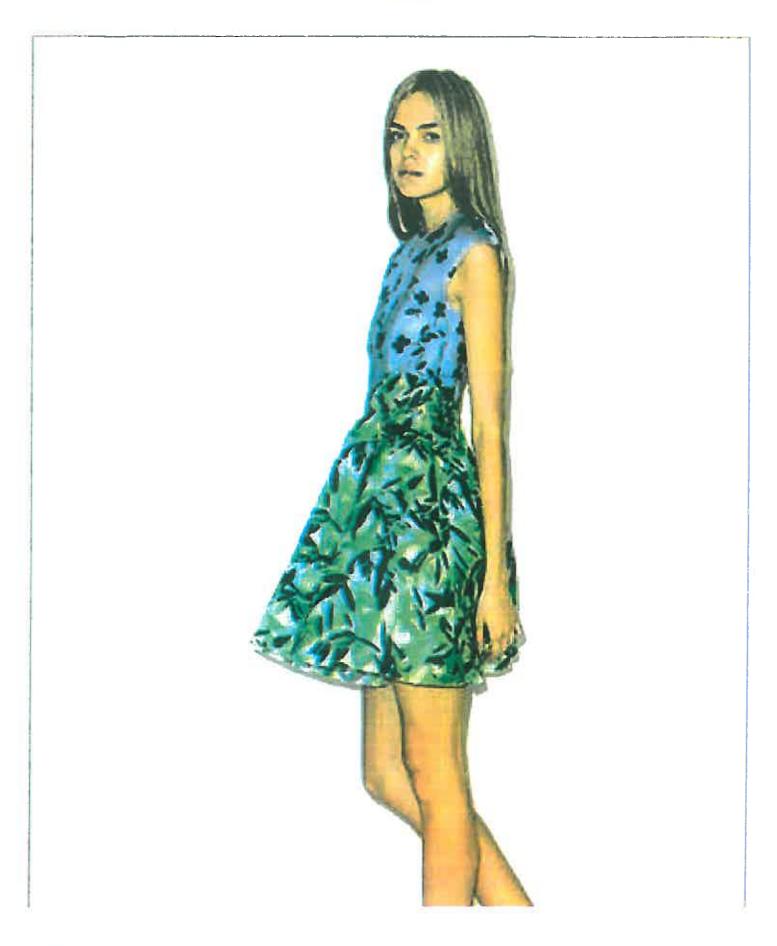
Not only do we adore her ready to wear line, Elle's success is pretty inspiring, too! Her residency in Hong Kong teamed with tips from her father (who is also in the industry), among years of hard work and determination contribute to young Elle's triumph as a fashion designer. Keep an eye on her work and check out our exclusive interview with Elle here—we're expecting high things from this up-and-comer!

### MEET ELLE SASSON



(http://ellesasson.com/)

PHOTO COURTESY: HULLE: SSASSONL





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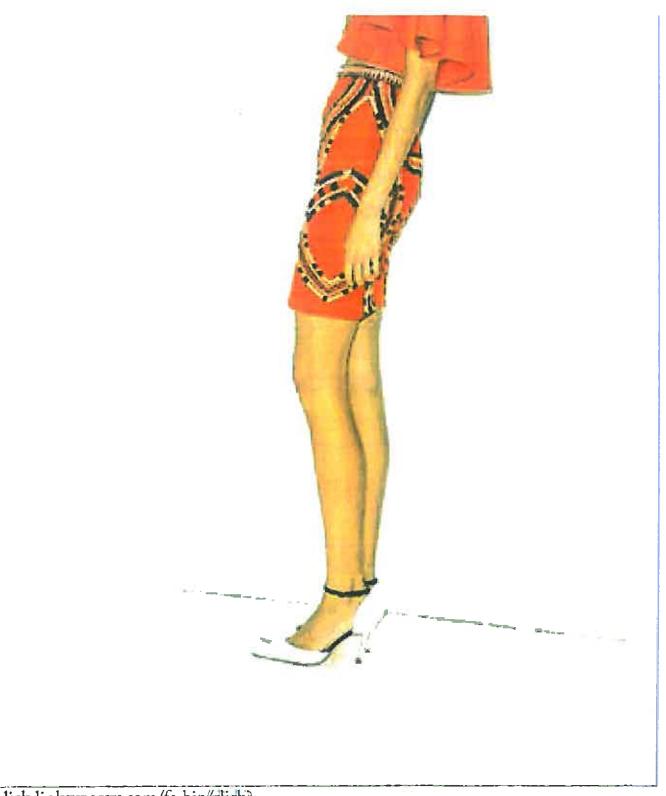
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SILK MIXED PRINTIDRESS, \$825

## HER INSPIRATION

"My spring collection was inspired by a trip to Los Angeles. Coming from Hong Kong, which is quite opposite, I felt very relaxed in LA. One day I came across Ed Ruscha's palm tree: series. I found it very inspiring and everything came together pretty quickly."





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ELLE TOP, \$245; EMBROIDERED SKIRT, \$755

## WHO SHE DESIGNS FOR

"I design for a version of myself. At this point I'm at work all the time, so for day time I dress very casual....usually jeans and a t-shirt, but I wouldn't design something that I couldn't see myself wearing."





(http://click.linksynergy.com/fs-bin/click?

SILK EMBROIDERED DRESS, \$1345

## CHALLENGES OF THE INDUSTRY

"This is my first experience of running a business, and though I am facing a different challenge everyday, I am very grateful for them because each challenge is another stepping stone toward creating a successful business."







(http://www.jdoqocy.com/click-3550561-10451141? url=http%3A%2F%2Fwww.shopbop.com%2Fbarry-dress-ellesasson%2Fvp%2Fv%3D1%2F1553427039.htm%3FfolderID%3D27226%26colorId%3D13149&cj

## ON GROWING THE BRAND

"First, I plan to have my site fully up and running soon, so I'll be able to sell directly to customers online. I am also planning to expand into the denim category and grow my offering of knitwear."





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MAURICE PRINTED TOP, \$365; BROOK LEGGINGS, \$395

## HER FATHER INSPIRES HER

"I've learned a lot from my father over the years and have drawn constant inspiration from him as well, but I think the most important thing he tells me almost every day is to stay true to what I believe in, design with love and to enjoy the process of designing."





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SONNY CHAMBRAY DRESS, \$425

## SHE'S ALWAYS LOVED FASHION

"Since I was a young girl I knew I wanted to work in fashion. It's something that I would always talk to my father about at home. I didn't plan to start so quickly on my own, but it just happened that way. Getting to work side by side with my father has been an amazing opportunity to learn and for that I am very grateful."





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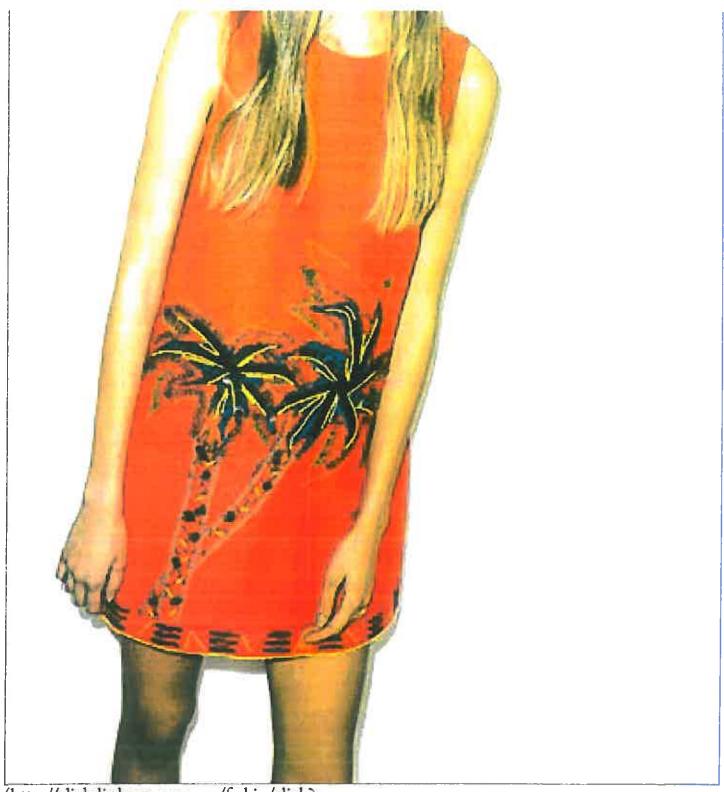
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BETTY SLEEVELESS SHIRTDRESS, \$595

# HER ADVICE FOR YOUNG WOMEN INTERESTED IN THE INDUSTRY

"You must be 100% sure you want your work to be your life and if you are, go for it with everything you have!!"





(http://click.linksynergy.com/fs-bin/click?

PALM EMBROIDERED DRESS, \$865

## HOW ELLE STYLES HER SPRING COLLECTION

"My spring collection has lots of embellishments and colorful embroideries, so I would keep it simple but still have fun. Throw on a pair of sandals and some beaded colorful bracelets (Shashi style), maybe with a wide brim hat and big sunglasses. Some fringe could also be fun!"

### STYLE IT WITH



Essex Sunglasses Elizabeth and James, \$165 (http://click.linksynergy.com/fs-bin/click? and-james-essex-57mm-polarized-



Palm Embroidered Dress Ble Sasson, \$865 (http://click.linksynergy.com/fs-bin/click? id=30KlfRmrMDo&subid=&offerid=276223.1&type=10&tmpid=1811-36KRBmrRMRMsabthtutE263f445625-27722616Ft-Rdypeorts&thmpid=

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Aztec Silk Cuff
Shashi, \$69
(http://shashi.bigcartel.com/product/aztec-silk-cuff)



Genette Sandals
Sam Edelman, \$100
(http://www.dpbolvw.net/click-3550561-10457058?
url=http%3A%2F%2Fpiperlime.gap.com%2Fbrowse%2Fproduc

PUBLISHED April 1, 2014

DESIGNERS Elizabeth And James (Http://Thezoereport.Com/Designer/Elizabeth-And-James/) / Elle Sasson

(Http://Thezoereport.Com/Designer/Elle-Sasson/) / Sam Edelman (Http://Thezoereport.Com/Designer/Sam-Edelman/) / Shashi

(Http://Thezoereport.Com/Designer/Shashi/)

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# **EXHIBIT F**

## Palm Trees? Yes Please! Why Elle Sasson Is the New Label We Love

We're crushing hard on the NYC-based designer's debut collection.

by Claire Knebl



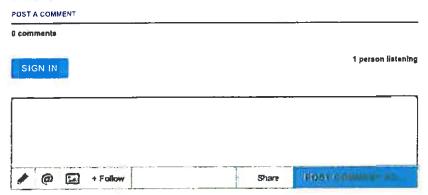
Photo: Courtesy of Elle Sasson

Sometimes not majoring in fashion can do great things for designers (we're lookin' at you, Joseph Altuzarra). The latest example? Up-and-comer Elle Sasson, who dropped out of school to forge ahead with her brand-new namesake label; which debuts this spring.

Inspired by artist Ed Ruscha's A Few Palm Treesseries, Ellecreated a totally tropical (and 100% wearable) first collection that's already been scooped up by stores like Shopbop and Neiman Marcus. Count us among the young designers super fans—it might only be October, but we're already daydreaming of her playful prints, whimsical silhouettes, and cute take on the crop top.

Prices start at \$215. For more information, visit ellesasson.com.

### WHAT DO YOU THINK?



Newest | Oldest

# **EXHIBIT G**



## New Designer Profile: Elle Sasson

By Marcy Medina



Elle Sasson Photo By Courtesy Photo

AA A+

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FASHION SCOOPS

Duchess of Cambridge Expeding Second Child



Louis Patton 405

The name Sasson was synonymous with designer-jean chic in the Seventies and better casual in the Eighties, but 2014 could be its year for a new categorical association: advanced contemporary sportswear. Elle Sasson, the 25-year-old daughter of Sasson Jeans and Kikit creator Maurice Sasson, is charting new territory with her own label. Launched as a capsule collection for spring, fall marks her first full lineup, comprising dresses, tops, bottoms and outerwear.

Going into design was a foregone conclusion for the younger Sasson, who was born in New York City and moved with her family to Hong Kong at age five. Raised between Hong Kong and Tel Aviv, Sasson studied fashion design in the two





cities and then interned for Alice + Olivia and Derek Lam in New York.

"I always knew I wanted to be a designer, but I didn't think I'd start my own brand so quickly. I had planned to work for another company first," said Sasson, who is now based in Hong Kong. But with easy access to Chinese fabrics and factories, she created her first collection, inspired by Ed Ruscha's art book "A Few Palm Trees," in less than a month and sold it to Bergdorf Goodman, followed by Neiman Marcus, Intermix and Shopbop. "Hong Kong is a very comfortable place to work because everything is within close reach," she added.

Her fall collection was inspired by a photograph of an iceberg in Iceland, from which she created a print for her starting point. She worked it into both red and blue palettes on minimal and Mod-inspired silhouettes. From there, the singer Björk became her muse. "I love her ethnic, fun and cute style," said Sasson. Thus she worked a penguin print and traditional Icelandic-style embroidery on poplin and sateen dresses and wool sweaters, and also featured several mohair and alpaca jackets. Wholesale prices range from \$102 for a simple top to \$1,120 for an embroidered dress. In addition to her U.S. doors, the line sells in Boon the Shop in South Korea, AlOthman in Kuwait and Stylebop in Germany.

Sasson herself says she prefers to wear casual black clothes with flat shoes, so her collection is aspirational: "In a way, I design clothes for the woman I'd like to be, with pieces that someone can wear every

day." She chooses to sketch alone behind

closed doors and with music playing, but when she's finished, she looks to her father for advice. "He sees stuff that I don't really notice," Sasson said. "He might suggest a top stitch instead of a clean finish, that I fold a hem wider to give the dress a different fall, that I make the waistband an inchwider or that I change the size of the zîpper teeth to raise the quality of a jacket." The elder Sasson, who these days travels to China frequently for consulting work, is also backing his daughter's company.

Armed with feedback from both her father and retailers, Sasson has plans to add more knits for her next collection, for resort. Needless to say, denim is also on the

Elle Sasson's: silk dress, worn with Kenneth Cole shoes.

Photo By Kyle:Encksen



Elle Sasson's wilk dress, worn with Kenneth Cole

Photo By Kytei Encksen

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### They Are Wearing: New York Fashion Week



They Are Wearing: Fleat Markets



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New York Designer Inspirations Spring 2015: Part One

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Top 10 Pantone Colors for Spring Women's and Men's

New York Designer Inspirations Spring 2015: Part Three

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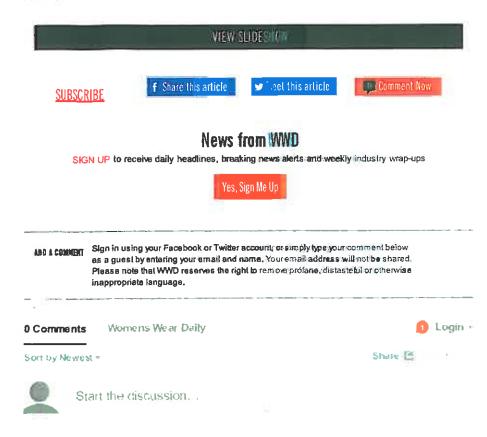


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### **NEXT STORY**

### FIFTH AVE.: RALPH LAUREN'S NEW INEIGHBORHOOD

When Ralph Lauren opensihis first Polosflagship at 711 Fifth Avenue, he will make a statement for the newly expanded Polo lifestyle.



### FORD, DIOR ACCESSORY SHOPS OPEN AT BERGDORFS

BG 20/20 made its first impression this month with the opening of Tom Ford and Christian Dior accessory shops.



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# **EXHIBIT H**

fashion news

## scious ort

Team Green gains. more momentum this spring thanks to FI&M's Conscious and Conscious Exclusive callections, The latest offerings are made from nustamable materials—think recycled bess-gmed and relies include labeling that offers tips on carino for elatines in a more environmentally sound way. Moving forward. H&M will include siretis: rage in all its garments.) The Ever Manifesto, an organization focused on an earth-friendly feelbox future, consulted on the dealyn of the Evaluative items which are dramatic and braden, with bonemian and filmente vibes. The Conscious Collection places girant anspiration from the deaert, leaturing loose. drama silvenettes. So a's time to take up the cause. and look good doing it. USA MISCHIANT





The good had nested at Kate Bouls How York, Kate Sease Suturday brouched test apring er Japan and om intintly only avaitable nermin the United States. Bet oft the cettet manage of terptions in Las. Augulus see Heusten, as well by a pay-up shop and tamporary 24-hear teach-secum worder shaps in Mankettan, the brand praught the courselve brickand-murtur retail experience to America line Kate Spede Suturdey has debuted a parmament atme is NYC's Solie dintrigt that may be ern bant soe get. In addition to agrard their, begs.

jeweiry, tach accesseries. and lifestyle products, this location will be the first with an autensize home goods section. The shop will bise include special features for şadgat-favinş girls, lika k phane-charging station, but will keep things intimate and personal with mood music from a vintage record player and a costamization station for the signature Kute Spade Saturday Wonkender Bag. New Saturday stores will open in Beston and Hawan this spring. LM 152 spring street, new yerk, ny 10012





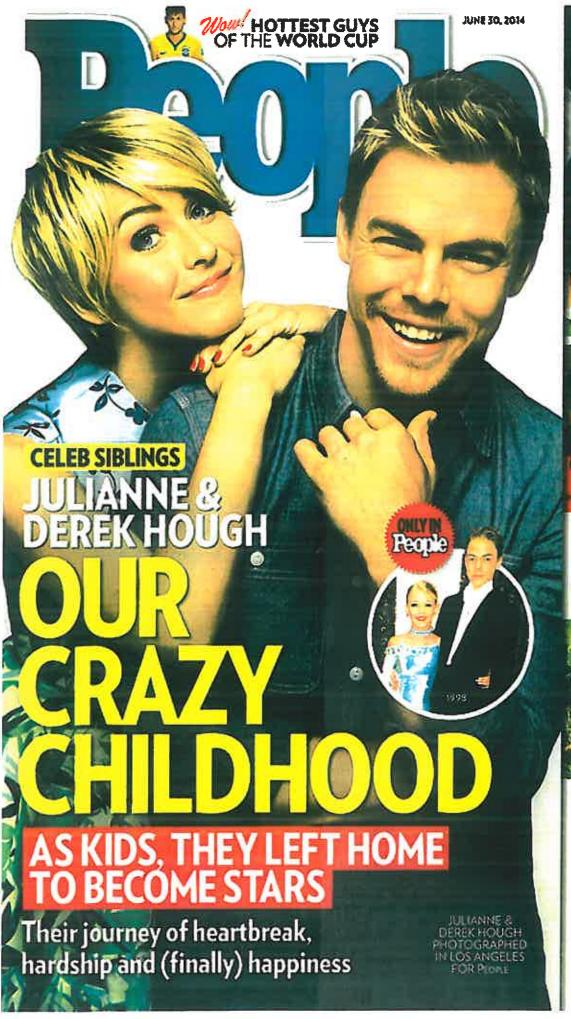
The mercury has finally deigned to surpass 50 degees, and Ella Sasson's very first collection is dulled everything we want to wear right this minute. Inspired by palm trees, Sasson's whimsical debut is fulled slik dresses, crop tops, and pleated skirts. The designer, who spilts her time between New York and Hong Kong, favors beadwork, embellishment, and crafty little duttails. "Every piece has a flirty olement," she explains. "I wanted the freeing to be fun." LAUREN OLSEN

Pesasson Celli



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# **EXHIBIT I**







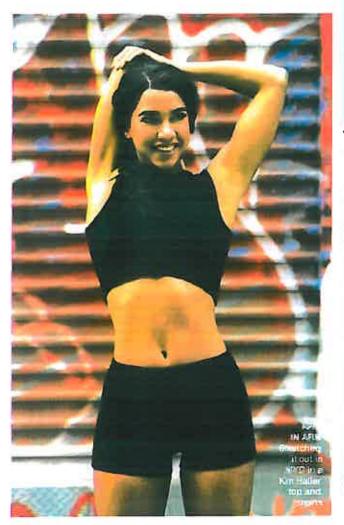
ANGELINA'S NEW MISSION HER EMOTIONAL PHOTO DIARY



2014 Pet Awards! A HERO DOG, A PAINTING HORSE & MORE!



# **EXHIBIT J**



\*The first thing I do when I wake up is turn on my kettle. I have hot water with lemon every morning.\*

"I eat extremely clean: an agai bowl or eggs with salsa and evocado."

### BRONFMAN'S WORKOUT PLAYLIST

Charli XCX "Boom Clap" (Aaroplana Remix)

AlunaGeorge x Tchami You Know You

Like It" (Remix)
Duke Dumont
"The Giver"

Nonono
"Pumpin Blood"
(Belarbi Remix)

Miley Cyrus
"Wrecking 8all"
(Caked Up
Remix)

ScHoolboy Q
"Man of the Year"

Blow" (Monsieur Adi Remix)

"My go-to outfit is a printed skirt, a button-down and a bracelet to spice if up." CUPF Jennifer Fisher, \$940; Jennifer Fisher, \$940; Jennifer Fisher com

SIGRIT Elle Sasso \$525; Jami Lyn, CAUDALIE



Carle II'm Income Carles Streeting Street Carles Streeting Street Carles Street

"When I get out of the shower, I date on this tener. It has a light, refreshing seent." TOMER Caudaile Beauty Elidir. \$49

been a pajama girt. These are

supersoft and

comfortable."

PAJAMAS SH

Eberjey com







## UP & OUT

Deejay and entrepreneur Hannah Bronfman tells us what gets her going.

"I never know what my day's going to be like," says Bronfman, a New York City-based deejay and cofounder of Beautified, a salon appointment-booking app. Her strategy is to make mornings relatively routine: Rise at 7 a.m., check email and Instagram for 10 minutes, shower. Gym time can be trickier to schedule, so Bronfman packs her Rebecca Minkoff bag with workout gear and heads 10 Beautified's office, then ducks out for a sweat session when she has a moment. "I love getting in a quick, 30-minute, full-body blast," says Bronfman, who does a combo of weights, calisthenics and cardlo. "I feel so accomplished when I've done so much and it's only noon."

## 3 things that get her up and out

THE SOUND OF SILENCE

"You'd think I'd listento music in the marning, but silence makes me, more focused."

2/ A SPEEDY BLOWOUT"HE

go to the salon with my hair already shampooed: It takes 45 minutes instead of an hour."

3/ BIKING TO WORK "ILS: sofast. I'm out the door at 9 and there by \$116." сі оскизь реди (ур цере нарна ялаталуа арап Вістрава, дету талде. Дой ресредов, голиная Вистрава за ресредова в редерова Вісте назна малежах соцятелу об слидаце





## THREE WAYS

# Cropped Sweater

Farifrom a summer fling, this short silhouette endures. Done up in a cozy ivory knit with a slightly roomy fit, it makes for one perfect chilly-weather layering piece



Fronthe ultimate in tomboy cool, sharpen things up with modinfluenced separates. Show off the collar and cuffs of an exford shirt, and let alhigh-waist mini with a charming multibyttexture flash lots of leg (but no midniff). Heeled loafers and a boxy top-handleibig add to the gamine factor.

Shinz Cctun-silk, Dresshirt, \$230; dresshirt.com.
Shinz Morar blend, Elle Sasson, \$460; at Beredorf
Goodman Loffs Gold plate with sodaline or jasper
catoditums, Lizzie Fortunato, \$195 each; at Nelman
Murrous. Bur Saffiano leather and calf hair, Pour la
Victorie, \$465; pour lavictoire.com. Shoes Calf hair,
Sigurson Warrison, \$425; sigerson morrison.com.

Go for pared-back elegance by building on the slouchy shape.
A gracefully draped boyfriend coat (In a playful, eye-catching cerulean, no less) and flowy knee-length skirt are office-best-dressed material. Finish with a clutch and cap-toe pumps for a sophisticated home run.

Coat Wool-nylon, Tibi, \$695; tibi.com.

Skirt Polyester blend, Milly, \$375; millyny.com.

Eyeglasses Plastic zyl, Corinne McCormack,

\$62; at Nordstrom. Clutch Leather, Banana
Republic, \$70; bananarepublic.com.

Pumps Suede, Stuart Weitzman, \$425;

at Stuart Weitzman, 212-750-2555.

Want an off-duty ensemble that's still polished? Skip blue leans and opt for pants in winter white. Break up the soft palette with a burst of striking burnt orange, which works well with jaunty leopard flats. A long gold necklace looks luxe, while a spacious tote is errand-ready.

Siecveless shirt Silk, Everlane, \$60; everlane .com. Parits Cotton-elastane, Apiece Apart, \$310; apieceapart.com. Necidace Brass, Luiu Frost, \$295; Iulufrost.com. Tote Leather and suede, Ampersand As Apostrophe, \$581; ampersandasapostrophe.com. Losfers Calf hair and leather, Dolce Vita, \$159; nordstrom.com.

# **EXHIBIT K**



Hairline Fracture A mesmerizing review of Hugh Jackman's ever-changing 'do



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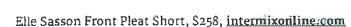
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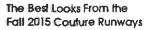


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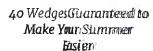
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# ELLE

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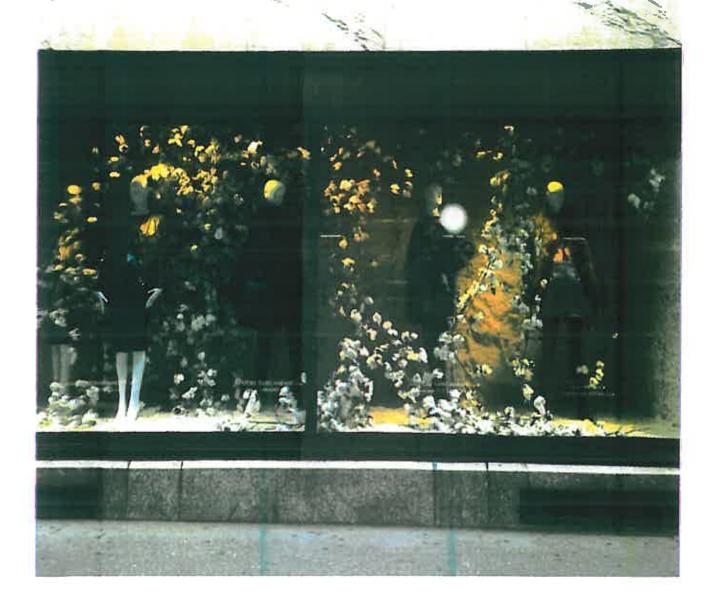


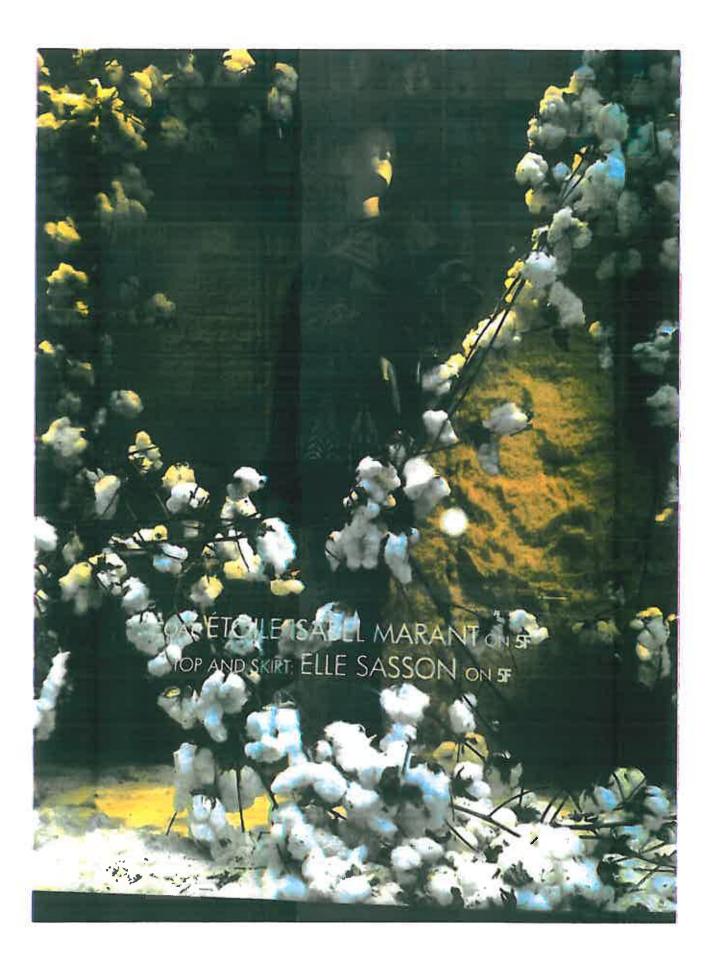
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Being Green

# **EXHIBIT L**

# BERGDORF GODMAN





# **EXHIBIT M**

Paris, le

1 3 SEP. 2013

Maurice SASSON 23 Yehuda Hanssa Tel Avay 69206 ISRAF L

Elle SASSON 23 Yeliala Hanssi Tel Aviv 69206 ISRAFL

#### OFFICIAL.

# REGISTERED LETTER + REGULAR LETTER

Notel : APCILR/HFP 13/90

Vyref :

Objetire : USA - Hachette Filipacchi Presse J. Vourselves.

#### Dear Sins,

We act for the French company Nachette Lelipseche Presse, a company affiliated to the group LAGARDERE ACTIVE, owner worldwide of the well-known trademark ELLE.

In this respect, the impact of the mark with the American Public is considerable, the majoritise ELLE existing unce 1945 and developed all over the world through 43 editions, being regularly exported throughout the United States through its international editions that circulate worldwide, at the very least over the last 35 years, not withstanding a wholly dedicated American edition, regularly distributed in United States since 1985, applied with multiple derived titles.

ELLE enjoys tremendous media coverage, not only through the press but also dirough the web, with a smallest strong Internet presence through multiple websites including web sites relaying the 43 editions such a ellegenery com, ellegenery com, ellegenery com, ellegenery com, ellegenery com, ellegenery accessores and beauty products, such as ellegassions fr. ellegenery promotion and sale of fashion clothing accessores and beauty products, such as ellegassions fr. ellegenery ellegenery ellegenery entrements.

HACHETTE FILPACCHI PRESSE is also the owner of a family of trademark registrations ELLE, in a very large number of countries, including the United States, for a wide range of goods and services, the attivities and business agreements relating to ELLE being extremely diversified.

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intellectual property

#### OFFICIAL.

Indeed, fill E is underly liceased in the fashion secur for clothes and accessories, specifically with liceasee Khol's

Therefore as a result of the insecudous investments made in relation to the mark, over the years, the mark has gained a strong reputation.

In this respect, we done your monition of the fact that the trademark HLLF has been recognized as a famous trademark in many countries and permit dly the Trademark Trial Append Board (decrease of 5 September 200) CHEE, ELIB LINGSPAIN but was by the Office of Harmon zation of the Internal Market (decreases of 27 April 2007 BLLE, BLLE LIN, BULE 10 November 2009 FLLE FULL VALUEY VENEYARDS (Print Board of appendix 10 September 2010 FLLE FILE SUPERS, IMS)

In this context, it has come to our attention the application by yourselves of the trademark ELLE SASSON no. 85355081 in international class 25, in use for clothes as evidenced by your website work ellegasson cum

Such one and registration will mislead the consumer into conceiving an association or link between you and our client, and may take under advantage and or cause deprison to the reputation of our client's earlier mark FELES, and or may delete the value of our client's famous trademark.

Indeed, the term ELLE is clearly individuatized and maintained separate, from a visual point of view from the word SASSON in view of the caesure made by the space, in such a way that the trademark ELLE is clearly identified in vior mark

So, the seminater could be moved into believing that there is some sort arrangement with you, in view of her policy in the regard. If the more so as our elient regically uses her mark PLLE in a series or family of marks with additions such as FILE MARBAGE ELLE ACCESSORIES in FILE PLUS, BISTRO, DECORATION, ORD. or COLLECTIONS.

Therefore, your adoption of a visually and enably identical and or small managers is a cause of concern for our distribution of or a dense money among the property of the content of an artification to the prior trades arise of some surface and with your company to view of the use and reputation of ELLE and its family of malamatics.

Moreover, the consumer could be misled into believing that you are an authorized uner and or a lacensee and or an affiliation company or that there is some son of arrangement with you.

Consequently, the present letter serves to notify you that the registration and the use of ELLE SASSON is considered by our elect as damaging its exclusivity to ELLE.

Of course, our client reserves any other legal qualification of facts that further information may reveal.

This being said, an amendment to the trademark application and the use in such a way that is read as ELLESASSON without spaces and without the term ELLE being highlighted (typeface size or color of letters, capital letter—) is perfectly acceptable.

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# SHERWINE

that the attended in a second resuming that you are interested in a micable without, please would you

allocates are the receipt of the present letter, undertake formally and in versing to withdraw the certified Likely addition in 1925/981 and/or to amend your trademark epiteation to ELLESANION to the term of the best being highlighted (typeface, size or color of letters, capital soor and the second of the sec

The control of the control of present letter, undertake formally and in unture, to come all unusual to the control of the cont

model to States the receipt of the present fetter, if you decide to amend your trademark application in LUENASSON, undertake formally and in writing to show one the trademark EELES ASSON is only to flow of an indevisible whole, in which the terms • EELE = and • SASSON • are to be presented as a solid surface, and software the term • EELE = being togethighted or any number whether of the first of the same, color, bettering capital letter. ) and under a device which is neither alreaded to targether to EELE device.

#### and within a deadline to agreed :

effectively course all the and to be or use to the future ELLE SASSON and to any equivalent sign and any other args confusingly similar to the trademark ELLE, whether as a trademark and or a trade has under a shop sign, and or a domain name.

and creater formally and in writing that all poods and of all promotional stall or entiremental persons as accurate on ELLE SASSON and or any other equivalent up and or any other equivalent up and or any other equivalent as a redement. ELLE, will be destroyed and in any case will not be reased after the expiration of the destroyed and in any case will not be reased after the expiration of the destroyed and in any case will not be reased after the expiration of the destroyed.

Your response is awasted at the latest within 20 days of the receipt of the present letter.

Please note that if no response is furthenning within the above apparated dending, our election expresses are rights to take the appropriate measures including, where necessary, inclinating light proceedings and or apposition proceedings.

by accordance with our Bar rules, you may wish to restruct Council to represent you by the present outsit.

This letter is being sent without prejudice to any clastic, course of action, damages and equitable relief, amount a cost and or decreases, all of which are hereby reserved.

Yours successo.

cases joly

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## September 13, 2013

## REGISTERED LETTER

MAURICE SASSON 23 Yehuda Hanssi Tel Aviv 69206 Israel

ELLE SASSON
23 Yehuda Hanssi
Tel Aviv 69206 Israel

OBJECT: USA Hachette Filipacchi Presse

#### Dear Sirs:

We act for the French company Hachette Filipacchi Presse, a company affiliated to the group LAGARDERE ACTIVE, owner worldwide of the well -known trademark ELLE.

In this respect, the impact of the mark with the American Public is considerable, the magazine ELLE existing since 1945 and developed all over the world through 43 editions, being regularly exported throughout the United States through its international editions that circulated world wide at the very least over the last 30 years, notwithstanding a wholly dedicated American edition, regularly distributed in United States since 1985, together with multiple derived titles.

ELLE enjoys tremendous media coverage, not only through the press but also through the web, with a similarly strong internet presence through multiple websites including web sites relaying the 43 editions such as *elle .com*, *ellejewelry.com*, *elleboutique.fr*, *elleuk.com* with millions of visitors per month as well as websites dedicated to the promotion and sale of fashion, clothing, accessories and beauty products, such as *ellepassions.fr*, *ellelingeries.eu*, *ellepretaporter.eu*.

HACHETTE FILIPACCHI PRESSE is also the owner of a family of trademark registrations ELLE, in a very large number of countries, including the United States, for a wide range of goods and services, the activities and business agreements relating to ELLE being extremely diversified.

Indeed, ELLE is widely licensed in the fashion sector for clothes and accessories, specifically with licensee Kohl's.

Therefore, as a result of the tremendous investments made in relation to the mark, over the years, the mark has gained a strong reputation. In this respect, we draw your attention to the fact that the trademark ELLE has been recognized as a famous trademark in many countries and particularly the Trademark Trial & Appeal Board (decision of 5 September 2008) CHEZ ELLE LINGERIE) but also by the Office | Harmonization for the Internal Market (decisions of 27 April 2007) ELLE/ELLE LDL ELLE; 11 November 2009, ELLA VALLEY VINEYARDS (First Board of Appeal), 10 November 2010 ELLE/ELLE SUPERSLIMS.

In this context, it has come to our attention the application by yourselves of the trademark ELLE SASSON no. 85855981 in international Class 25, in use for clothes as evidenced by your website <a href="https://www.ellesasson.com">www.ellesasson.com</a>

Such use and registration will mislead the consumer into conceiving an association or link between you and our client, and may take unfair advantage and or cause detriment to the reputation of our client's earlier mark ELLE and or may dilute the value of our client's famous trademark.

Indeed, the term ELLE is clearly individualized and maintained separate, from a visual point of view from the word SASSON in view of the \_\_\_\_ made by the space in such a way that the trademark ELLE is clearly identified in your mark.

So, the consumer could be misled into believing that there is some sort arrangement with you, in view of her policy in this regard, all the more so as our client typically uses her mark ELLE in a series or family of marks with additions such as ELLE MARIAGE, ELLE ACCESSORIES, or ELLE PLUS, BISTRO DECORATION GIRL or COLLECTIONS.

Therefore your adaption of a visually and orally identical and/or similar trademark is a cause of concern for our client, because the consumer could be misled into believing there is some association with the client's mark as an \_\_\_\_\_\_ of or a derivation from or an affiliation to the prior trademark, or some sort of arrangement with your company in view of the use and reputation of ELLE and its family of trademarks.

Moreover, the consumer could be misled into believing that you are an authorized user and/or a licensee and/or an affiliated company or that there is some sort of arrangement with you.

Consequently, the present letter serves to notify you that the registration and the use of ELLE SASSON is considered by our client as damaging its exclusivity to ELLE.

Of course, our client reserves any other legal qualification of facts that further information may reveal.

This being said, an amendment to the trademark application and the use in such a way that is read as ELLESASSON without spaces and without the term ELLE being highlighted (typeface, size to color of letters, capital letter ....) is perfectly acceptable.

First these reasons and assuming that you are interested in amicable settlement please would you:

Immediately after the receipt of the present letter, undertake formally and in writing to withdraw the trademark ELLE SASSON no. 85855981 and/or to amend your trademark application to ELLESASSON without spaces and without the term *ELLE* being highlighted (typeface, size or color of letters, capital letter ...) with the relevant evidence of this.

Immediately after receipt of the present letter, undertake formally and in writing, to cease all use and to never use in the future ELLE SASSON and/or any equivalent sign and/or any other sign confusingly similar to the trademark ELLE, whether as a trademark and/or a trade name and or a shop sign, and or a domain name, with your acknowledgment of our client's prior rights.

Immediately after the receipt of the present letter, if you decide to amend your trademark application to ELLESASSON, undertake formally and in writing to always use the trademark ELLESASSON i.e., only in the form of an indivisible whole, in which the terms "ELLE" and "SASSON" are to be presented as one word without spaces, and without the term "ELLE" being highlighted in any manner whatsoever in terms of its size, color, lettering, capital letter... and under a device which is neither identical nor similar to the ELLE device.

And within a deadline to agreed:

Effectively cease all use and to never use in the future: ELLE SASSON and or any equivalent sign and or any other sign confusingly similar to the trademark ELLE, whether as a trademark and/or a trade name and/or a shop sign and/ or a domain name.

Undertake, formally and in writing that all goods and/or all promotional and or international literature and signage with ELLE SASSON and or any other equivalent sign and/or any other sign confusingly similar to the trademark ELLE, will be destroyed and in any case will not be reused after the expiration of this deadline with the relevant evidence of this.

Your response is awaited at the latest within 20 days of the receipt of the present letter.

Please note that if no response is forthcoming within the above stipulated deadline, our client expressly reserve its right to take the appropriate measures including, where necessary, instituting legal proceedings and or opposition proceedings.

In accordance with our Bar rules you may wish to instruct counsel to represent you for the present matter.

This letter is being sent without prejudice to any claims courses of act ion, damages and equitable relief, attorney's fees and/or defenses, all of which are hereby reserved.

Sincerely,

Casey joly

# **EXHIBIT N**

UNITED STATES PATENT AND TRADEMARK OFFICE

**Trademark Trial and Appeal Board** 

P.O. Box 1451

Alexandria, VA 22313-1451

General Contact Number: 571-272-8500

Mailed: February 13, 2015

Opposition No. 91215067

Hachette Filipacchi Presse

v.

Maga Team (Hong Kong) Ltd.

Jennifer Krisp, Interlocutory Attorney:

Hachette Filipacchi Presse ("opposer") filed an opposition to an application

submitted by Maga Team (Hong Kong) Ltd. ("applicant") to register the mark

ELLE SASSON (standard characters) for "clothing, namely, dresses, pants,

jackets, blouses, pant suits, dress suits, slacks, shirts, headwear, belts, skirts,

evening gowns, vests, blazers, lingerie" in International Class 25.1

opposes on the grounds of 1) priority and likelihood of confusion pursuant to

Trademark Act Section 2(d); and 2) dilution pursuant to Trademark Act Section

43(c); it pleads ownership of several registrations which are or include the mark

ELLE, and which cover various goods in International Classes 4, 9, 16, 18, 20, 21,

25 and 26.

<sup>1</sup> Application Serial No. 85855981, filed February 21, 2013, based on an allegation of a bona fide intent to use the mark in commerce pursuant to Trademark Act Section 1(b).

Before the Board are 1) applicant's January 15, 2015 motion to suspend this proceeding pending the disposition of Civil Action 1:15-cv-00194-VM, which is before the United States District Court for the Southern District of New York (captioned *Elle Sasson, Maga Team (Hong Kong) Ltd., and Elle Moore & G LLC. v. Hachette Filipacchi Presse d/b/a Elle magazine)* ("civil action"), and 2) opposer's motion to extend the close of discovery and remaining dates for sixty days. The motions are fully briefed.<sup>2</sup>

It is the policy of the Board to suspend proceedings when a party or the parties are involved in a civil action, which may be dispositive of or may have a bearing on the Board proceeding. The applicable authority, Trademark Rule 2.117(a), provides as follows:

Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action or another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or the other Board proceeding.

See also TBMP § 510.02(a) (2014); General Motors Corp. v. Cadillac Club Fashions Inc., 22 USPQ2d 1933, 1937 (TTAB 1992). Suspension of a Board proceeding, pending the final determination of another proceeding, is solely within the discretion of the Board. See TBMP § 510.02(a) (2014).

Here, the Board presumes the parties' familiarity with the record, including arguments presented on both motions.

2

<sup>&</sup>lt;sup>2</sup> Applicant's motion is not double-spaced, as required by Trademark Rule 2.126(a)(1). The Board may refuse to consider any filing that does not comply with

As an initial matter, applicant included, with its reply brief, materials that it did not submit with its motion and brief. *Cf. Fuji Photo Film Co. v. Jazz Photo Corp.*, 394 F.3d 1368, 73 USPQ2d 1678, 1685 n.4 (Fed. Cir. 2005) (court will not consider arguments raised for the first time in reply brief and not addressed in an opening brief as those arguments are considered to have been waived). However, in this case, inasmuch as the Board prefers that a motion to suspend under Trademark Rule 2.117(a) pending a civil action include a copy of the operative pleading filed in said action so as to aid it in ascertaining whether suspension is appropriate (*see* TBMP § 510.02(a) (2014)), the Board gives consideration to the materials.

A review of the complaint in the civil action indicates that in that action, applicant requests, inter alia, declaratory judgment under the Trademark Act that its use and registration of the mark ELLE SASSON has not infringed upon or diluted the rights asserted by opposer in the ELLE marks. Opposer argues that the civil action relates solely to applicant's right to use the ELLE SASSON mark. Nonetheless, in this opposition the involved application is based on Trademark Act Section 1(b); thus, applicant will be statutorily required to demonstrate actual use of its mark in commerce prior to approval for and issuance of a registration. Accordingly, the outcome of the civil action could potentially have a bearing on, at a minimum,

all applicable rules of procedure, and expects that all future filings in this proceeding will be compliant.

applicant's rights in, and specifically its right to use, the ELLE SASSON mark.

Inasmuch as a final determination of this issue in the civil action could have a bearing on the issues that are before the Board, and thus could bear on the outcome of this opposition proceeding, the Board finds that suspension is appropriate. In view of these findings, applicant's motion for suspension pursuant to Trademark Rule 2.117(a) is granted.

This opposition proceeding is <u>suspended</u> pending final disposition of the civil action between the parties.

Turning briefly to opposer's motion to extend the close of discovery, said motion is denied inasmuch as the Board has found that suspension is appropriate. For completeness, with respect to the merits of opposer's motion it is noted that the record does not support opposer's assertion that applicant filed its motion "as a delay tactic so that Applicant does not have to serve its discovery responses" (opposer's brief, p. 2). Nor can the Board assume that applicant filed the civil action as a delay tactic. In the event that the Board resumes this opposition proceeding, opposer may file a renewed motion, as appropriate and timely, to extend discovery, or a motion directed to the discovery issue(s) on which opposer seeks resolution. Opposer shall note, however, that to the extent that it files a motion to compel discovery, any such motion must set forth what efforts opposer has made - between the time of resumption of this proceeding and the filing of the motion to compel — which

establish a good faith effort to resolve the discovery dispute. See Trademark Rule 2.120(e).

Within twenty days after the final determination of the civil action, the parties shall so notify the Board so that this proceeding may be called up for appropriate action.<sup>3</sup> Such notification to the Board should include a copy of any final order or final judgment which issued in the civil action.

During the suspension period, the parties must notify the Board of any address changes for the parties or their attorneys.

In addition, the parties are to promptly inform the Board of any other related cases, even if they become aware of such cases during the suspension period. Upon resumption, if appropriate, the Board may consolidate related Board cases. See TBMP § 511 (2014).

<sup>&</sup>lt;sup>3</sup> A proceeding is considered to have been finally determined when a decision on the

merits of the case (*i.e.*, a dispositive ruling that ends litigation on the merits) has been rendered, and no appeal has been filed therefrom, or all appeals filed have been decided. *See* TBMP § 510.02(b) (2014).